HOUSE OF COMMONS

First Session—Twenty-fourth Parliament

1958

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Chairman: C. A. CATHERS, Esq.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3

Bill C-37

An Act respecting the Taxation of Estates

TUESDAY, JULY 22, 1958

WITNESSES:

Dr. A. K. Eaton, Mr. Gear McEntyre, Mr. W. I. Linton, Mr. D. S. Thorson.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1958

61171-5—1

STANDING COMMITTEE ON BANKING AND COMMERCE

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Vice-Chairman: Yvon Tassé, Esq.

and Messrs.

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Benidickson
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Robichaud
Rowe
Rynard
Southam
Taylor
Thomas
Thrasher
Vivian
White
Winch.

Antoine Chassé,
Clerk of the Committee

MINUTES OF PROCEEDINGS

House of Commons, Room 118.

TUESDAY, July 22, 1958.

The Standing Committee on Banking and Commerce met at 3:30 o'clock p.m. The Chairman, Mr. C. A. Cathers, presided.

Members present: Messrs. Allard, Bell (*Carleton*), Benidickson, Brassard (*Chicoutimi*), Cathers, Crestohl, Deschambault, Drysdale, Flynn, Fraser, Gour, Jones, Keays, Lockyer, MacLean (*Winnipeg N. Centre*), Martel, McIlraith, Morton, Nugent, Pallett, Southam, Thomas, Vivian, Winch.

In attendance: Honourable Donald Fleming, Minister of Finance; Dr. A. K. Eaton, Assistant Deputy Minister, Department of Finance (on retirement leave); Mr. Gear McEntyre, Deputy Minister, National Revenue, Taxation Division; Mr. W. I. Linton and Mr. A. L. DeWolfe, of the Department of National Revenue; Mr. E. H. Smith, Department of Finance; Mr. D. S. Thorson, Department of Justice.

The Committee resumed consideration of Bill C-37, An Act respecting the Taxation of Estates.

Clauses 13 to 27 inclusive were severally considered and adopted.

During the study of the said clauses Honourable Donald Fleming, Dr. Eaton, Mr. Linton, Mr. Thorson and Mr. McEntyre were questioned.

At 6:10 o'clock p.m. the Committee adjourned to meet again at 3:30 o'clock p.m. Wednesday, July 23rd, 1958.

Antoine Chassé,
Clerk of the Committee.

61171-5—1½

EVIDENCE

TUESDAY, July 22, 1958.
3:30 p.m.

The CHAIRMAN: Order please. Gentlemen we have a quorum now so we will proceed. The minister will be delayed for about ten or fifteen minutes, but he has asked us to carry on. Last night when we adjourned at 10 o'clock we had finished with section 12 on page 18. We are going to commence now to discuss clause 13.

Mr. W. I. LINTON (*Administrator, Succession Duties, Department of National Revenue*): I wonder if I might make a suggestion, Mr. Chairman. Clauses 13, 14 and 15 are all involved and integrated into each other and it may be a little difficult to get the general sense if we deal with them section by section. Would it be helpful if I made an explanatory statement as to what they all do?

The CHAIRMAN: Would you please do that.

Mr. LINTON: For purposes of the payment sections the property that is subject to tax is divided into two parts. One part is the property which passes through the hands of the executor and the other part is the property that is taxable but does not pass through his hands. With regard to the property that does pass through his hands, which is called the included property, he is liable for the tax and this is the tax which is placed on the estate as a debt of the estate. Now, in addition the successors to that property are liable as sureties for the tax applicable to the benefits. So if the department cannot collect from the executor it can collect from the successors. In some cases the executor cannot be reached or there may not even be an executor. In regard to the property that does not pass through the executor's hands the liability on it falls on the successors primarily, but the executor is required to use any property that goes to the same successor from his hands to pay the duty owing by that successor on the property that does not pass through his hands.

The CHAIRMAN: Would you give us a definite example regarding the two things to which you are referring?

Mr. LINTON: Suppose you had an estate which had various assets belonging to the deceased. He appointed an executor and he also left insurance payable to a named beneficiary. The property all but the insurance would be property passing through the executor's hands. The executor would be liable for the duty on all that property as a debt of the estate. Now let us suppose the insurance is payable to the widow, who is also a beneficiary of the estate proper. Then the executor must pay the duty on the widow's insurance from the property in his hands, as far as it will extend, that goes to her and she is liable directly for the duty over and above that, if any.

Mr. JONES: What provision is there made for protecting the executor against property that may pass to a successor but not through his hands, of which he has no knowledge?

Mr. LINTON: He would be expected to inquire about that property, but if he has no knowledge there is a provision in this whereby as long as he has used due diligence in fulfilling his duty, he would not be responsible.

Mr. D. S. THORSON (*Legislation Section, Department of Justice*): Perhaps in answer to your question I could say in addition that the successor would be directly responsible in that case to advise the successor of the bequest and he would of course be liable for the duty in question.

Mr. WINCH: What is the meaning of "due diligence"? I am interested in this question of the insurance angle because it can happen so often. I am speaking from personal experience. I am still named as executor of a number of wills and I have no knowledge of any insurance. What do you mean by "due diligence" as far as the executor of the normal estate is concerned?

Mr. LINTON: He would be expected to inquire into it in making his return of all the assets of the estate. He would be expected to do his best to ascertain all particulars. If insurance or any other asset passed to a successor outside of his control and he had not found out after all due effort there would be no liability on him and there would not, in any case, unless the successor to that property also got property from the executor.

Mr. JONES: Is there a prescribed form of release which the executor could obtain from the successor?

Mr. WINCH: That is the point which I was going to come to. Would it be called a form or is there a provision for the executor to receive from the beneficiaries of an estate an affidavit from them that they had not received anything outside of his knowledge, and file that.

Mr. LINTON: It is questionable whether you need to go that far, but that would be good evidence of due diligence.

Mr. THORSON: If he did that, I think there could be no recourse against him in the event of an asset of that character turning up.

Mr. FLYNN: His own affidavit would still be better.

Mr. LINTON: In many cases that would be the best.

Mr. CRESTOHL: Is there a burden of proof placed on the executor?

Mr. LINTON: He would have to show due diligence if there was such property and he had not pait tax on it. In doubtful cases what it would be would have to be determined by the courts, I suppose, but it is something short of proof.

Mr. CRESTOHL: It seems like a difficult burden of proof for an executor to have to discharge.

Mr. THORSON: I would think not in the average case. In most cases it would be sufficient if the executor established that he paid over the property after having paid the taxes, that he paid it over in good faith after making all inquiries that are normally expected.

Mr. CRESTOHL: Would an affidavit not suffice?

Mr. THORSON: His own?

Mr. CRESTOHL: Yes.

Mr. THORSON: Very probably it would, although there could be circumstances in an individual case where he might be under an obligation to inquire further.

Mr. CRESTOHL: It is obvious that if bad faith is proven then he is certainly delinquent.

Mr. THORSON: Yes.

Mr. CRESTOHL: I think the burden of proof should be shifted from the executor to those who would feel that he was not acting in good faith. It should be up to them to prove bad faith rather than him discharging the burden of good faith.

Mr. WINCH: In regard to the things that come under the purview of an executor in his investigation—he finds there is nothing outside of what he knows and he then passes it on. He then finds that the beneficairies had received something of which he had no knowledge. Would any payment on the estate tax be against the beneficiaries and not against the executor?

Mr. LINTON: That is right, as long as he had made normal inquiries about the said property.

Mr. JONES: Could you just give me that example you used again and perhaps we can clear up this point? It was an example of property passing.

Mr. LINTON: An estate passing partly to a widow and partly to someone else, and in addition the widow getting life insurance payable directly to her.

Mr. JONES: Using that as a basis from which to work, you would imagine from the use of the words "due diligence" that any executor would have to inquire from all the insurance companies.

Mr. LINTON: No, I do not think so. I think we would expect him to inquire of the widow and of the immediate relatives and people concerned in the estate where there was such property. Certainly his diligence would not extend to asking all the insurance companies if they had a policy.

Mr. JONES: I am referring to the insurance companies in his own town or city. From experience in the courts those are the sort of questions that executors are asked by opposing counsel or judges. "Did you inquire whether there was such an insurance policy?", and they go on and say, "Surely it is a simple matter to make inquiries". But I say it is not a simple matter to make such inquiries at all. Yet, the question may come up.

Mr. LINTON: I would think "due diligence" would be discharged far short of inquiries of that nature.

Mr. THORSON: That sort of inquiry given by him. The insurer could be an insurance company carrying on business outside of Canada. Therefore, it would be quite unreasonable to impose an obligation on the executor to inquire of other insurance companies throughout the world.

Mr. JONES: I am not suggesting that in court they would hold that an executor had failed in due diligence by failing to inquire of every company throughout the world, but in a city such as my own which has a population of 80,000, there are a number of insurance companies who operate. It would be quite a burden on each executor of each estate.

Dr. A. K. EATON (*Assistant Deputy Minister, Department of Finance*): Would the insurance companies be required to answer his questions? I would not think they would be required to do that; I do not know. They might in a friendly sort of way, but it would seem to me he would have no power to assert his position, whereas he has vis-a-vis the others of the family. He would have a status there but not with the insurance companies.

Mr. JONES: I would suggest there, Mr. Chairman, that undoubtedly he would take a status if he is called upon to assume a liability and he could assert that status before the court if it came to that.

The CHAIRMAN: Mr. Jones, does not the answer here suffice that if he asked the widow if there were any other policies of insurances and she gave him a negative answer that would suffice as far as due diligence is concerned?

Mr. JONES: I think we have brought this matter sufficiently to the attention of the officials now so they can watch the progress of the act as it works and if they do find problems in this regard an amendment could be suggested. We may find that the legal interpretation may vary considerably from the

interpretation that has been given the committee here. There is no obligation on any court to accept the department's definition of due diligence unless it is written into the act.

Mr. EATON: Did you have that phrase in the old act?

Mr. FLYNN: I think it is the best term you could find. You would have to prove gross negligence to be able to hold an executor liable for the tax.

Mr. JONES: No. Due diligence and gross negligence are not opposing terms.

Mr. BENIDICKSON: Mr. Chairman, I see the minister has arrived and I was waiting to say something.

Hon. DONALD M. FLEMING (*Minister of Finance and Receiver General*): I am sorry I was late but Mr. Botsio, the Ghana Minister of Industry and Commerce was in to see me.

Mr. BENIDICKSON: I think the new features to this particular section indicate the value which outside counsel has given to the administration from the various briefs that have been received. I must reiterated my point we are proceeding a little too hastily because I would like to ask the chairman whether or not he has yet received, or has the minister received what is called Mark II criticism of the Canadian Tax Foundation.

Mr. FLEMING (*Eglinton*): Mark II?

Mr. BENIDICKSON: Just as you would have an aircraft either Mark I or Mark II. Only now in the mail, within an hour or so, have I received what is called Mark II notes, on the estates tax bill.

Mr. FLEMING (*Eglinton*): Are you referring to that document which came in today?

Mr. BENIDICKSON: Yes, we are all busy and we have not time to read these things in great haste, particularly when we receive them about noon time. But I think it just emphasizes my point that only now is it circulated to the public that we are discussing this bill. As suggested only today we are receiving personally certain suggestions from the public. I received another one this morning. As the minister said yesterday he questioned whether or not he would disclose the name of the sender of some advice from one of the trust companies, but I have a letter here from one of the most prominent legal firms in Montreal which has a little reference to section 33 (e).

To tell you very frankly he is referring to Bill 248. In the rush that we are all under I have not been able to study that since receiving it at the post office half an hour ago as to what the new section conceivably could be and its import, but I think many members of this committee are members of this Canadian Tax Foundation. I do not presume to be a paid subscriber myself, but certainly receive and have for some years gratuitously by reason of my former position, I think, most of their publications and only this morning did I receive in the mail their memorandum of July 1958 which is a repetition of most of the complaints put forward to the minister in a letter personally addressed to him.

Mr. FLEMING (*Eglinton*): It is really a summary of the brief they submitted.

Mr. BENIDICKSON: With respect to 248. I only received it today. Now, it may be as a result of some discussions I have had in the last couple of days with members of the Canadian Tax Foundation, or it may be that it is now going to all persons on the mailing list of the Canadian Tax Foundation.

However, I dismiss that because it refers, of course, entirely to an analysis of Bill 248, but in the mail today I received from the Canadian Tax Foundation a copy of details that they have given to their members in which they refer to Mark II comments on the advances in connection with this type of legislation.

Neither the minister nor the chairman can tell me that they have either received it or analyzed it. Certainly I never received it until 11.30 this morning, but I might quote just a few excerpts. This is at least a twelve-page document. It is a revision of the comments they made with respect to Bill 248 having—and I think as expeditiously as you would expect a national body to do—examined the new bill. They say:

"There are many changes—"

The CHAIRMAN: Excuse me, is what you are going to read in connection with what we are discussing now?

Mr. BENIDICKSON: Yes, because I made the point that the amendments that are eliminating criticism in this committee with respect to 13(2), I think the minister will admit, are contrary to the drafts that were submitted to him or to the previous administration by his administrative advisers. They were repeated in many of the briefs we have from the public, this relief to executors under certain circumstances for liability.

I am just saying this is illustrative of the value of consulting not only administrative people who have, I know, a proper regard for the public, of course, but also have a confined knowledge and experience and probably do not appreciate sometimes how certain phraseology in acts is difficult for the public at large. That is the point I am making. This was not in Bill 248.

Mr. FLEMING (*Eglinton*): I would be the first to say, Mr. Chairman, that we are deriving a great deal of benefit from the submissions that were made in the period between January and June and gave a most careful study to all of them.

Mr. BENIDICKSON: And as time goes on I hope to tell the minister where he has improved the act, as I did last night. This particular document indicates, as I intended to suggest, that there is much improvement to Bill 248 but the document asserts on behalf of this very important organization that there is still much in the nature of their criticism that has not been taken care of in the new bill and how are members of this committee to be aware of this if we move in the haste which is indicated.

The CHAIRMAN: Mr. Benidickson, you were not here on Friday; yesterday morning or yesterday afternoon you took up about an hour settling this point and actually I think it was fairly unanimous that we were not going to call witnesses at the present time. Last night you brought it up again and we spent considerable time on it. It was then again more or less defeated and now you are bringing it up again. Now, can we get that settled in your mind because we cannot—

Mr. BENIDICKSON: Mr. Chairman, I do not want to obstruct your committee. On the other hand, I have a role to perform which I think the minister would be the first one to appreciate because he had a similar role for many years and discharged it very aggressively and very efficiently. Even last night I quoted him as a precedent for saying with respect to a certain section of the bill before the committee of this kind that he felt obliged to say that it did not carry his approval at this stage and I am doing the same.

I am not trying to be obstructive, I really do feel that there is unseemly and undue haste in the progress that is attempted to be made in this committee.

Mr. FLEMING (*Eglinton*): Mr. Chairman, that statement should not be allowed to pass unchallenged, the assertion that this committee is proceeding with undue and unseemly haste. That just is not the fact. It just happens, Mr. Chairman, that this is the fourth meeting of the committee on this bill. We were on the bill for an hour and a half last Friday, we were on the bill yesterday afternoon for a meeting that lasted two and a half hours and we were on the bill last evening for a matter of two hours. In other words, we have spent six

hours in the committee so far on this bill and thus far we have dealt with twelve sections. Now, who can say that spending the equivalent of half an hour on each section of the bill thus far is undue and unseemly haste? I am surprised at Mr. Benidickson making a statement like that because it just has no foundation in fact.

Mr. BENIDICKSON: and I have been on a good many committees together and I think if he will look back and examine this question thoroughly he will agree that we have never seen a committee that has proceeded more deliberately than has this one. And if my memory serves me correctly when Mr. Abbott brought in the income tax bill some ten years ago and it was a bigger bill than this, this committee, the Banking and Commerce Committee completed its review of the whole bill in two days of intensive sittings.

This is the fourth meeting now and I do urge, Mr. Chairman, that we do proceed as we have been doing, looking at every clause of the bill, turning it inside out, ransacking it for questions or problems. I think the committee will agree, the officials are here, we have tried to give you all the information, we have tried to give you the arguments which have been used against the publication of this bill, we have also stated the contrary recommendations, we have not tried to sell you a bill of goods; we have tried to give you both sides of the story, and with great respect I think Mr. Benidickson's statement is utterly unwarranted and I do respectfully urge that we do proceed with our task.

Mr. BENIDICKSON: Mr. Chairman, may I agree with the minister in that we have sat on committees of this kind many times in the past, but as pointed out yesterday prior to the income tax bill of 1948 to which you referred there was a much longer lapse after referral than has been made possible here.

May I say in addition that it was made clear with respect to the Income Tax Act of 1948 that its provisions did not take effect in so far as the tax-payers were concerned until I think it was January 1 of the following year. The sittings were in June.

Now, that is not typical of what we are discussing now, but for personal integrity may I just say this, that I was a member of the Banking and Commerce Committee in 1948 representing the majority group and Mr. Abbott proposed to introduce in the last stages of the sittings an amendment and may I just say that at that time I took a stand that I feel some members of the government party should take at this time—

The CHAIRMAN: Mr. Benidickson, may I interrupt you? We went through this twice already. Are we going to go through it every day? I thing it is being unfair. You are going back to a bill in which there was a precedent set and there were no witnesses called, and I thing it was well deliberated here yesterday and there was no support for your own idea on this thing and I think we should carry on with the job that we are doing in the way we are doing it.

Mr. BENIDICKSON: Well, in two words, Mr. Chairman, so that new members will not be thinking I am advocating something I was against in 1948, may I say that this volume contains compliments to me from the late Senator Hackett who was then a member of the house and I want to ask here, Mr. Chairman, whether or not any members of the committee besides myself have received or are interested in the Mark II version of the analysis of the Estates Tax Act as put out by the Canadian Tax Foundation.

My proposal was that I would read just a few comments from it. I thought that our original agreement was that we wanted from either the minister or members of the committee to be read into the record excerpts from bodies of that prestige if they would in some way affect our decisions and deliberations here.

Mr. NUGENT: Mr. Chairman, is that not when we come to specific sections? If he has a specific comment on a specific section then he can read opinions into the record, but let us get on with the job. It seems to me Mr. Benidickson's remarks are parallel to a motion in the house which has been debated and been defeated and then he has debated it again and wants to argue it again before the house. I suggest that would be allowing too much leeway and we are better off spending our time going through this clause by clause and he can bring up any specific objections on any specific clauses as we come to them.

Mr. BENIDICKSON: May I point out that this document which reached me this morning indicates that up to clause 13 we have already disposed of several sections when an organization of this repute would have disputed those if it had been given adequate opportunity to look at Bill C-37.

Mr. FLEMING *(Eglinton)*: May I suggest that we go along now and if there are any points that Mr. Benidickson finds are raised in anything he has in his dossier there relative to any particular section that he raise it. I want all those opinions and there should be full discussion.

As to something that has been passed I will be surprised if it is something that has not been before us and touched on here. But we can have a look at that document as to anything it says relative to particular sections and I will be glad if he will show it to me. I will be surprised if it has not already reached my office. I will be glad to have a look at it.

Mr. BENIDICKSON: May I say that although this document says, "There are many changes which will meet with general approval," and that was indicated yesterday. In the next paragraph it says: "But as such it leaves disappointed several points of view which we felt were quite reasonable." And many of them were disposed of yesterday.

Mr. FLEMING *(Eglinton)*: Mr. Benidickson, I made it quite clear that we had not adopted all the suggestions we had received in all the briefs and any people in whose briefs all of their ideas were not accepted are in a position to express regret that all their ideas were not accepted, but the point is we are putting before the committee all the objections put to us on all these clauses we covered up to now and we sought to give the committee the reasons why the government take the responsibility for recommending the adoption of some of these suggestions and for not favouring others. That is the position we are in and if now there is in this document anything that pertains to clause 13 of the bill and Mr. Benidickson wants to sponsor the view that is put forward in that submission I am sure the committee will be glad to hear it. But it should be relevant to the clause under discussion.

Mr. JONES: At this stage to have it in record, it has not apparently penetrated to the committee that there has not been any suggestion at any time that we rush about this bill—we can take all the time we want to in order to discuss it, and that is what the committee, I presume, wants to do. The reason for procedure in this way was set out very clearly at the start in that it is an orderly method of procedure and also gives us the advantage of having Dr. Eaton who has returned for the specific purpose of being before this committee.

Mr. BENIDICKSON: I know Dr. Eaton very well and I know despite his personal interests he would not mind staying for a week after a long period of continuing to put the public interest ahead of his own.

The CHAIRMAN: Well, before we got off on this track Mr. Linton was going over in a general way sections 13, 14, 15, 16 and 17 which all have to do with the payment of tax liability on an executor, and I am going to ask Mr. Linton to continue.

Mr. CRESTOHL: Were we not talking about the "due diligence"? Have you disposed of that?

The CHAIRMAN: That was covered yesterday and in Mr. Linton's general discussion again the question came up.

Mr. BENIDICKSON: We did not pass 13, Mr. Chairman?

The CHAIRMAN: No, not 13. We are considering from 13 to 15 at the present time.

Mr. BENIDICKSON: This is just a prize example of the fact that an administration with the best intentions, a minister and a cabinet can recommend to His Excellency the passage of a certain bill such as they did with respect to 248 and which is lacking all of those features that were drawn to their attention by these outside bodies which are being ignored at the present time.

Mr. JONES: Mr. Chairman, this committee has heard a discussion of these problems and that is the purpose of having a committee so we can go over these problems clause by clause as they are set forth in this bill, and I think the members of this committee have been doing a good job exploring the problems that have been raised by all these members of the public who have brought briefs to the attention of either the committee or the minister.

In the very clauses that we are dealing with now, 13, 14, 15 etc. we have been discussing before the interjection of Mr. Benidickson the problems relating to the words "due diligence", and we might have cleared that matter up by now if we had not had this useless interjection.

Mr. BENIDICKSON: Mr. Chairman, we will have some more suggestions to make.

Mr. CRESTOHL: I do not think observations made here generally are useless. They might be in the opinion of some members of the committee but not in others. We are discussing particular new pieces of legislation, not amending an old one.

Mr. JONES: Well, let us discuss the legislation.

Mr. CRESTOHL: Fine, allow us to do so. I do not know if this committee has had placed before it all the submissions. I admit, Mr. Chairman, as a member of this committee that I do not know all the submissions. I do not pretend to know anything about this difference of legislation. I am anxious to know.

Mr. Fleming (*Eglinton*): Then why did Mr. Crestohl not attend the meetings of the committee? This is the fourth meeting and if Mr. Crestohl had attended the meetings he would have had all this information. We cannot go back and start all over again because a member does not attend meetings.

Mr. CRESTOHL: I am not going back to clause 12, I am at clause 13.

The CHAIRMAN: But, Mr. Crestohl, you have asked us who have presented briefs in this and that has all been gone into at an earlier meeting. Now, you do not expect every member that comes in to go back over past history.

Mr. CRESTOHL: Mr. Chairman, I certainly do not expect that.

The CHAIRMAN: I think I am going to rule that we go on with Mr. Linton.

Mr. BENIDICKSON: Mr. Chairman, I do not want to prolong this. Could I just ask the one question which I think will be a normal one at each meeting; have you since our last meeting received any representations indicating a desire to appear?

The CHAIRMAN: No.

Mr. BENIDICKSON: I just myself indicated from a responsible organization a brief that I had received.

Mr. DRYSDALE: Mr. Chairman, it is probably irrelevant, but I wonder if we could get back to section 13. In bill 248—

The CHAIRMAN: May I interrupt? Before we were going to start with 13 Mr. Linton made a suggestion that he make a general statement before we get into the details of it. It may give us a better understanding of the details with respect to the matter of the liabiliy of the executor.

Mr. LINTON: This deals with two divisions—property in the hands of the executor and property passing outside the Executor, the relevant responsibility for each, of the executors and successors in those two classes of property.

Section 15 provides that where a successor has to pay duty himself on property which is in the nature of an annuity or a term of years or life interest or anything that has any limited time to run, that can be paid in six monthly instalments and it further provides that where a successor is responsible for his own duty on property the deceased owned that was an interest in expectancy, the duty can be paid at any time up to the time the interest in expectancy falls into possession.

I think, Mr. Chairman, that outlines the general structure of these payment sections.

Mr. DRYSDALE: Returning to 248, 14(1), under that clause the executor was liable to pay taxes on property within his possession or under his control as an executor. I notice the word "possession" was omitted in the new section 13(1) and I was wondering what the reason was.

Mr. THORSON: I think the word you find missing will be found in subclause (5) of clause 58. This is the interpretation part of the act.

Mr. DRYSDALE: I see.

Mr. THORSON: The same clause is carried forward.

Mr. FLEMING (*Eglinton*): That subclause appears on page 47.

Clause 13 agreed to.

On clause 14—payment tax by successor.

Mr. BENIDICKSON: Is there some obligation here on the successor notwithstanding the fact that assessments are under the control of the executor?

Mr. LINTON: Mr. Chairman, the obligation of the successor to property which passes through the hands of the executor is as surety for the payment by the executor, and it is limited to the tax on property which that successor gets.

Mr. BENIDICKSON: That is, he must receive it. I was going to raise the question as to how he could be levied for tax on something which he never received.

Mr. LINTON: He would not, Mr. Chairman, actually receive it. He would have to be entitled to it.

Mr. FRASER: That actually happens under the Income Tax Act. You are sometimes assessed on money that you have not received. This might be a judge's order. You do not receive the money but you are taxed for it just the same in spite of the fact that you have not got it.

Mr. BENIDICKSON: I thought it was laid down that one of the elements of simplification was the avoidance of chasing the beneficiaries and that we were not primarily looking to the successors? I can see circumstances where you would want to hold the successor liable but I am thinking chiefly of circumstances where the successor had received his benefit before the property got into the hands of the executor.

Mr. LINTON: Mr. Chairman, that would only happen presumably where the successor was entitled—apart altogether from the executor—to property

as a donee, perhaps, of a gift, in which case the executor's liability would be confined to any property that went to that successor from the property that the executor had under his control. If that donee got no property through the executor, the executor would have no responsibility for that duty at all.

Mr. BENIDICKSON: This does not appear to be much simpler than it was in the other act except for the consolidation of rates.

Mr. LINTON: If you simplify this to the point of making the executor pay all the duty on everybody's property you get into a very inequitable situation.

Mr. MORTON: I presume, Mr. Chairman, this covers the case where the insurance was given to a preferred beneficiary, such as a wife, which would not go through an executor, as such, and the only way you could do this would be to hold the widow liable for the tax directly?

Mr. BENIDICKSON: I suppose it is allowed under the act for $10,000, or something like that?

Mr. LINTON: That is only freedom to the insurance company to pay without the consent of the department on advice. That does not affect the taxability.

Mr. BENIDICKSON: No, but the value is received by the beneficiary and the executor might be left without the "where with all" to provide the tax.

Mr. LINTON: Yes, but in regard to that kind of a policy, if the payments were made to the widow or other beneficiary the executor would not be liable for any tax on that unless that beneficiary got other property through his hands.

Mr. NUGENT: Mr. Chairman, my interpretation of this section as it now reads is that whether or not the beneficiary actually got the money through the executor, to which he was entitled under the will, in the event the executor failed to pay the tax due, the beneficiary would have to pay it?

Mr. LINTON: That is right.

Mr. NUGENT: Is that correct?

Mr. LINTON: Yes.

Mr. NUGENT: That seems to be a pretty heavy—

Mr. FLEMING (*Eglinton*): There must be secondary liability on the beneficiary. The primary liability is laid on the executor or personal representative, but it cannot be confined to him because you have got to take account of two cases.

First of all, there is the property that passes, that does not pass through the hands of the executor; for instance, an insurance payment going directly to the beneficiary.

The other case is where the executor simply does not pay, and the beneficiary, having received the benefit through the executor, certainly should be obliged to pay.

Mr. NUGENT: What about the case where there is no property passing directly, and everything comes through the hands of the executor but he simply absconds with all the money. We then have the beneficiary of the estate who has received nothing, but is liable to the tax on everything he should have received.

Under this clause, that could happen, could it not?

Mr. LINTON: Mr. Chairman, such a beneficiary's remedy is against the executor to collect his property.

Mr. FLEMING (*Eglinton*): You see, there is no difference there as compared with the Succession Duty Act. The Succession Duty Act today lays the

liability directly on the person who succeeds—the beneficiary. We are not creating a new liability here. There is no new principle of liability created here at all, I can assure the hon. member of that.

Subclauses (2), (3) and (4) agreed to.

On subclause (5):

Mr. BENIDICKSON: What is the reason for this subcause, Mr. Linton?

Mr. LINTON: This is just a piece of machinery, Mr. Chairman, for effectually collecting the tax.

Subclause (5) agreed to.

On subclause (6):

Mr. MACLEAN (*Winnipeg North Centre*): Where does this section differ from the previous section?

Mr. LINTON: Mr. Chairman, you have a lot of new sections in this act. Because of it being an estate tax the structure of the payment provisions is quite different from the Succession Duty Act where the liability is primarily placed on the successor. You have the liability for the estate proper primarily placed on the executor, so, of course, the effectuating provisions will be different.

Mr. MACLEAN (*Winnipeg North Centre*): So all this does then is, in regard to any payment by a successor within the tax, relieve the executor of a corresponding amount?

Mr. LINTON: This is to avoid the possibility of collecting the same tax twice.

Mr. MACLEAN (*Winnipeg North Centre*): Where a successor pays a tax that an executor is liable for he still has his right at common law?

Mr. THORSON: That does not purport to interfere with the rights of an executor, vis-à-vis a successor.

Clause 14 agreed to.

On clause 15—Instalment payments.

Mr. BENIDICKSON: Is there a change here between this and Bill No. 248 in respect to instalment payments?

Mr. LINTON: No, I do not think so, Mr. Chairman.

Mr. BENIDICKSON: I think this is perhaps the proper place to raise a question about the insurance principles. Of course, for capital valuation of a pension or annuity, and using that office administrative rule, it is quite conceivable that a widow would be charged a substantial estate tax based on the life expectancy that she does not enjoy because she dies much sooner than the average life expectancy. Is this the place to raise such a question.

Mr. FLEMING (*Eglinton*): If I might say so, Mr. Chairman, that question was raised and I dealt with it at the proper place.

Mr. BENIDICKSON: I do not think it was dealt with, Mr. Chairman. It was referred to.

Mr. FLEMING (*Eglinton*): It was dealt with in an earlier clause when we were dealing with the question of what is property. We went over the whole matter there. I think we reviewed the subject at some length, Mr. Chairman, indicating that this was a matter on which there had been various submissions with various views put forward.

The argument was put forward that this taxed the same benefit twice; taxed as income and taxed as capital. The reasons were clearly indicated in the respect that this present clause 15 deals with the matter of payments by

consecutive instalments. It does not deal with the question of what is property or how you calculate the value of such a benefit for estate purposes. That was discussed on the earlier clause which was dealt with.

Mr. BENIDICKSON: I think I realize the distinction, but as I recall, the member of the committee raised a question—I think it was Mr. Thomas—and he said that he probably felt obliged to accept the annuity tables in a matter of this kind. I am not so sure that it would be administratively difficult to say that if a widow dies much sooner than the average life expectancy, she therefore has paid an amount of estate tax that should not have been paid.

Mr. FLEMING (*Eglinton*): Are you going to apply the same reasoning and say that if she lives beyond the period of life expectancy, according to the tables, that she should have to pay an additional assessment then?

Mr. BENIDICKSON: No, I would expect a good natured man like you to side with the taxpayer.

Mr. FLEMING (*Eglinton*): My sympathies are always with the taxpayer and that is the reason for a good many of these provisions being in the form in which they appear before the committee, Mr. Chairman.

Mr. CRESTOHL: That is so obvious.

Mr. FLEMING (*Eglinton*): We went over this question, I think, and it was dealt with thoroughly. It certainly does not arise in regard to this present subclause of the bill. This subclause deals simply with the matter of payment of taxes and certain interest. It is not a calculation of value.

Mr. BENIDICKSON: My impression is that you received representations urging that these instalment payment privileges be more lenient. The basis of the arguments of most of the representations, as I recall them, were on behalf of the annuitant or the beneficiary, is that not correct?

Mr. FLEMING (*Eglinton*): Oh, yes.

Mr. BENIDICKSON: Please do not suggest that I am irrelevant then.

Mr. FLEMING (*Eglinton*): You are relevant on this section.

Mr. BENEDICKSON: This is an administrative section for collections.

Mr. FLEMING (*Eglinton*): Mr. Chairman, the point that Mr. Benidickson is raising is the question of whether there should be a re-opening of the assessments of the estate where one of the assessments passing could include in the aggregate net value of the estate, a pension or an annuity which arises on the death of the deceased. We discussed the question as to the calculation of value there, and also this point as to whether a re-assessment is feasible where a widow does not live out the full life expectancy based upon the tables.

I pointed out that in that case, if you are going to be logical, you will have to reassess also in the case where the widow lives longer than the life expectancy imputed to her by the tables.

I also pointed out that if you are going to put an annuity or pension on the same duty basis you are discriminating as amongst the different classes of assessments. I think that view has recommended itelf to the committee.

As to the matter of re-assessing, I pointed out that this re-assessment would arise only on the death of the widow, in the case put. The widow is not going to get any benefit out of that re-assessment. She has passed from this veil of tears by this time. What are you going to do then? Supposing it happens 20 years after the death of the deceased, are you going to take the benefit, in that case, to the estate of the widow and chase her heirs all over?

The additional tax in respect of the pension or annuity payable to the widow has been paid, under the estate tax principle, by the executor. It has been paid out of the estate of the deceased, unless this is one of those cases

where the property has passed, independently of the estate, directly to the beneficiary. Perhaps this has happened long years after the executor has died, and long years after the distribution. Are you going to try to open the whole thing up to determine where any benefit arising from the re-assessment should go?

The widow in practically every case would not have paid it, and in the second place there would be no re-assessment until she is dead. Those are the simple administrative facts of the case.

In the face of that it just did not seem to warrant a re-opening. If you are going to re-open it in the one case, where a widow does not live out her full life expectancy, you will have to re-open it in the other case, where she lives longer than her life expectancy.

Mr. JONES: I suppose an analogy would be the application in regard to real property? A valuation is placed on the property and the tax is computed on that valuation. The property may go down in value or up after the tax has been set.

Mr. PALLETT: Mr. Chairman, what is the departmental practice when you have a restrictive clause about remarriage and the widow remarries?

Mr. LINTON: If we were advised of a remarriage we would re-assess because in the factors which take account of the life expectancy there is no provision for a remarriage.

Mr. BENIDICKSON: Is that supposed to lengthen the life or shorten it?

Mr. FLEMING (*Eglinton*): There is no average on that subject.

Mr. LINTON: There is no provision in here for it. There is a provision allowing the minister to re-assess within four years. That is a factor which is not included in the factors used for the computation. I would think we would re-assess if an application was made within four years.

Mr. BENIDICKSON: In this instance I think we should compliment the minister. This is an extension from four to six years.

Mr. FLEMING (*Eglinton*): Thank you. All compliments are gratefully received, Mr. Chairman.

Paragraphs (a) and (b) agreed to. On subclause (2):

Mr. BENIDICKSON: Is this a repetition of the five per cent that we discussed pretty thoroughly last night?

Mr. LINTON: No, Mr. Chairman, it has nothing to do with that. This is interest charged on delayed payments on interests in expectancy, which interest can be at the rate determined by the minister, and must not exceed five per cent.

Clause 15 agreed to.

On clause 16—Deferment of time for payment in certain cases.

Mr. BENIDICKSON: I think this is another improvement over Bill No. 248 as a result of representation largely from the public. Because the first bill was designed within the previous administration. I must say that I have some knowledge of that. We have narrow views sometimes when we are in an official capacity, but this is something which I think should be commended.

Mr. NUGENT: I am sure we are all pleased to have Mr. Benidickson's approval of this.

Mr. FLEMING (*Eglinton*): Mr. Chairman, I might say there was a slight change made here. This is a minor change, not a major change. I am glad it meets with approval.

Clause 16 agreed to.

On clause 17—Effect of objection or appeal.

Mr. BENIDICKSON: This clause is very stringent. How do you justify these changes in the administrative powers? There may be no liability for tax but the minister may compel a payment well in advance of an adjudication, for instance, on a matter of an appeal. This seems to me rather different than income. This has reference to capital.

Mr. FLEMING: If I may say so, does that not underline the reason why you need a provision like this in this act? Let us take a simple case of appeal; John Jones' estate has been assessed for a sum that his executor considers to be larger than the true tax liability and he wants to appeal. He has his right of appeal but the department says to him, "this appeal may take a long time; we have to be very sure that the appeal is not going to be used to drag out the payments."

Mr. BENIDICKSON: But you get interest after six months.

Mr. FLEMING (*Eglinton*): If you collect it; and then in the meantime some of the asssets on which you are charging him have wasted in value and some of these assets may have disappeared. Therefore, we will say to you you should pay the assessment before you appeal. If you are successful in your appeal you will get your money back; if you are not successful,—all right, you have paid as you ought to pay. I think the reasons here for requiring the appellant in tax appeal proceedings to pay the tax before launching the appeal—what may be a long course of appeals—are stronger in this case than in the case of the income tax.

Mr. BENIDICKSON: The crown may be wrong, and the result is that damage to the taxpayer is done. You cannot retrieve the assets and I do not think capital arrangements are so hard to find, particularly when you control releases. I imagine you control them when there is a dispute.

Mr. LINTON: Mr. Benidickson must be referring to subclause 2, and that is to prevent the situation where capital is being removed from the country. While it is rare, it does happen and we have just been able to get at it in this way.

Mr. FLYNN: Could you not use the provision of section 2 in the case of an appeal if you think the appeal is not serious? Do you not think the rule provided in section 2 would be sufficient if it applied to all cases?

Mr. FLEMING (*Eglinton*): I think an examination of the two clauses of section 17 will make it quite clear they deal with different cases.

Mr. FLYNN: I know.

Mr. FLEMING (*Eglinton*): The first clause deals with your general case where there is an appeal, and you have your stipulation that liability to pay is not affected by entry of an appeal. Clause 2 applies in a specific case. It is a case where in the opinion of the minister a person is attempting to avoid payment of any amount payable by him as tax. That is the situation where in the case mentioned by Mr. Linton your man who is liable is attempting to resort to some subterfuge.

Mr. BENIDICKSON: In the opinion of the minister.

Mr. FLEMING (*Eglinton*): There are provisions in the Income Tax Act that have been there for a long time that are just as rigorous as those, and they have never been objected to.

Mr. BENIDICKSON: Income is more ephemeral than capital, and you are introducing something new.

Mr. FLEMING (*Eglinton*): No, I think the case is stronger here. Once it gets over the border you will never overtake it. Once the capital goes, it is gone for good.

Mr. NUGENT: I am concerned with part I and tying it in with section 23. After the filing of the notice of objection the minister has an opportunity of confirming the assessment or re-assessing. The time limit there is 180 days before they can take an appeal. In case the minister does nothing, I would have thought section 17 (1) might have been a little kinder to the taxpayer. Had there been some requirement the tax would be payable after the minister has replied to a notice of objection. There might be some cases where there is an error in assessment and a notice of objection is put in under section 23. The minister does not have to reply at all and there is not an appeal launchable in that case until 180 days, so I would be happier to see the two tied in where the minister has to give some reply.

Mr. LINTON: Under section 23, if the minister does not reply in the time limit, the case automatically goes to the appeal board.

Mr. NUGENT: That is 180 days; the people could have their money all tied up or not have it available to pay this.

Mr. BENIDICKSON: You would have to sell the property to pay the minister.

Mr. NUGENT: You may have to, whereas if the time required for payment is when the minister replies to the notice of objection, then it gives them a little better chance.

Mr. FLEMING (*Eglinton*): If you did that, you are going to give this taxpayer the benefit of having another six months to pay the tax; that is not fair.

Mr. FLYNN: I suggest the minister may add the same right as provided in subsection 2 of section 17. In the case of an appeal or objection, if the minister is not satisfied with the appeal and the objection is serious, or that the situation endangers the possibility of collecting the payment, that the minister may direct the taxes be paid. I would think the rule that you have to pay when an appeal is launched or when the objection is filed is too stringent.

Mr. NUGENT: The point I am trying to make is that they have ninety days in which to file a notice of objection to an assessment, and if he has it to pay the department does not have to do anything for a further six months. So long as the department does not do anything he cannot bring it on to appeal; he cannot have the matter decided. It goes to appeal after that six months, after the department decides to sit on it. I thought we would be better off if there is some way we could force the department to move a little more quickly. If he is going to have to pay the taxes on assessment and there is no other remedy for him, we should make the department speed up in order that the matter could be decided on an appeal more quickly.

Mr. LINTON: If payment is enforced before the appeal is decided—generally that would not likely happen but it might—if it did happen and he succeeded in his appeal, he gets his money back with interest.

Mr. BENIDICKSON: But it is a lower rate of interest than commercial earnings.

Mr. LINTON: He gets 5 per cent.

Mr. MACLEAN (*Winnipeg North Centre*): Is that the same as the Income Tax Act in regard to overpayment?

Mr. NUGENT: Maybe you could require him to do the same thing by requiring him to give security. But in many cases the actual payment of the cash while the government is able to wait six months without doing anything, might create quite a hardship. Sometimes operating capital is extremely valuable.

Mr. FLEMING (*Eglinton*): I will ask Mr. McEntyre to make a comment on that last suggestion.

Mr. J. GEAR MCENTYRE (*Deputy Minister, Department of National Revenue*): We have this situation in the Income Tax Act. I think the side note

refers to the income tax provision. Very often we have taxpayers who have a serious appeal and who find it very difficult to raise the money to pay the taxes pending the appeal, whereas there are assets available which of course the taxpayer feels they would not otherwise realize unless they had to pay the taxes. In these circumstances, arrangements can be made with the taxation division to provide security or guarantees of some kind pending the outcome of the appeal. This is done quite frequently in the income tax administration, and I feel it would probably work out the same way with respect to the few cases we would have in this new estate tax.

Mr. CRESTOHL: Does the provision of the Income Tax Act allow the giving of security satisfactory to the department, or is it only an act of grace on the part of the department to do that?

Mr. MCENTYRE: It is at the discretion of the department.

Mr. CRESTOHL: There is no provision or any regulation.

Mr. LINTON: It is in this act at section 49.

Mr. MCENTYRE: A similar provision is provided in clause 49 of this bill.

Mr. FLEMING (*Eglinton*): It covers the point that was made.

Mr. CRESTOHL: I would like to raise a further question. Subsection 1 of section 17 speaks of a liability to pay. That is not the compulsion. There is a liability to pay and the department can say a liability exists notwithstanding the fact you launched an appeal. The department can say we want you to pay, or we do not, or we trust you. The second section is the compulsory section. "If you file under section 2 we insist you pay because you use the words "where a person is attempting to avoid payment". Would it not be wiser to use the word "evade"?

Mr. FLEMING (*Eglinton*): It is always a matter of regret when I find myself disagreeing with Mr. Crestohl on a question of legal interpretation. May I quote section 51(2) of the Income Tax Act and you can compare this with the wording of clause 2:

"Where, in the opinion of the minister, a taxpayer is attempting to avoid payment of taxes, the minister may direct that all taxes, penalties and interest be paid forthwith upon assessment."

Mr. CRESTOHL: That still does not confirm or repudiate what I am saying.

Mr. JONES: I think there is a fundamental misconception here as to the meaning of these particular words and if I might draw this to your attention, sir, I think your trouble might clear up. This is what section 17(2) says—"avoid payment of any amount payable." The use of the word "avoid" that you are making in connection with income tax is not to avoid taxes that are payable but avoiding—

Mr. CRESTOHL: If I appeal I am attempting to avoid paying tax which has been assessed against me; when I am evading I am doing something illegal.

Mr. FLEMING (*Eglinton*): May I suggest to Mr. Crestohl, with whom I always enjoy a legal argument, I think Mr. Jones' point is well taken. It is to avoid a tax payable. We have these same words used in legislation such as the Absconding Debtors' Act and similar legislation. The word "avoid" has a well defined meaning and I do not think it is as confined as what Mr. Crestohl was previously arguing for.

Mr. CRESTOHL: The minister will no doubt be interested—I would like to send him some jurisprudence right on this point where higher courts held it is not illegal for a taxpayer to avoid taxation or, I think the words are, to avoid burdensome taxation. It is illegal for him to evade or attempt to evade taxation. That is an obiter dictum by a judge of the Superior Court in Montreal.

Mr. FLEMING (*Eglinton*): Well, here is Mr. Thorson, a very competent draftsman. May I ask Mr. Thorson if there is any difference here between "avoid" and "evade"?

Mr. THORSON: I think perhaps there is some. Evasion is, as you point out, the concept of being an illegal escape from taxation whereas avoidance could mean either a desire to reduce your tax liability or a desire not to evade it but to avoid payment indefinitely. You are not attempting to evade payment of your tax; you are adopting techniques and devices whereby you put yourself out of the reach of the treasury for collection of the tax.

Mr. CRESTOHL: If I do that legally and I succeed in avoiding the application then I have not evaded.

Mr. THORSON: Quite so; I would concede that. The point is avoidance goes beyond evasion and contemplates a situation where a person is adopting deliberate delaying tactics.

Mr. CRESTOHL: You are perfectly right. The reason I raise it is I do not know that section 2 is also covered by the giving of security. If it is then that point is nothing, it is just interpretation.

Mr. FLEMING (*Eglinton*): Section 49 has a point dealing with security, but this would also cover subclause (2).

Mr. LINTON: Well, subclause (2) was mainly designed to prevent people escaping paying taxes that are owing, by removing the assets from the country or something of that kind and security would be no answer to that.

Mr. BENIDICKSON: In view of what Mr. Thorson said why do you not say "avoid or evade"?

Mr. CRESTOHL: And a person has a right to avoid.

Mr. WINCH: I am no lawyer, but I think this is beating around the bush because it says "avoid a tax which is payable." Therefere avoiding is evading when you use the words "tax which is payable."

Mr. CRESTOHL: When is it payable?

Mr. THORSON: I suggest you cannot establish tax evasion under certain circumstances where delaying tactics were being adopted.

Mr. WINCH: On a tax payable?

Mr. THORSON: Yes.

Mr. WINCH: That is why we have so many lawyers in this country on account of terminology.

Mr. NUGENT: Is this meant to put pressure on people who may have an appeal coming and are seeking a legal loophole to avoid the extra tax?

Mr. LINTON: No, the section is designed to prevent people from escaping the proper liability for tax by taking some means of getting themselves or their assets out of the place where they can be reached by suit.

Mr. NUGENT: On that interpretation then the word "evade" is the one that is required.

Mr. THORSON: I suggest not, sir. There would be many circumstances where it would be difficult if not impossible to prove an intention to evade taxation under the act, whereas—

Mr. NUGENT: All this is covered by the opinion of the minister?

Mr. PALLETT: Then it does not matter what word you use when you are relying on the opinion of the minister.

Mr. FLEMING (*Eglinton*): Let Mr. Thorson finish his answer.

Mr. THORSON:—whereas there might be steps taken to safeguard, having regard to the course of conduct of a taxpayer, a man from the thought that he was attempting to avoid the payment of the tax that was payable.

Mr. JONES: Shall we say the incipient taxpayer?

Mr. THORSON: Well, the process dodger.

Mr. GOUR: In that case you have some in 49 here. You could have some mortgage or something any place without forcing that gentleman or that executor to sell some property at that time. He may have some money later.

Mr. FLEMING (*Eglinton*): Quite so, clause 49, if the taxpayer offers security under clause 49 then there would be no occasion to apply the power under subclause (2) of 17.

Mr. GOUR: If we have got something to guarantee, no matter if he goes away as long as he has enough to guarantee the payment.

Mr. FLEMING (*Eglinton*): Quite.

Mr. MORTON: On that point I should like to say it is at the minister's discretion and sometimes as solicitors when we are dealing with tax officials on a lower level we wish there were a few rights on behalf of our clients and I am speaking as a lawyer. Would it be better if in that clause 17 it would say, "every taxpayer be given the opportunity of putting up security"? There and then he has the right of putting up security and it is not left at the whim of the minister's representatives whether he should put up that security.

Mr. NUGENT: Somebody would still have to value the security.

Mr. MORTON: Well, that is all right, securities are something that can be judged, but there are some times when officials on a lower level are not too sympathetic.

Mr. FLEMING (*Eglinton*): This is an authority that the act confers on the minister. It is a matter in which the minister must take the responsibility.

Mr. MORTON: I grant the minister that that is where the minister should accept the discretion, but I think in practice directives are sent out along with the act as to what the officials may do. This sometimes puts the taxpayer at a disadvantage and we sometimes feel if it would not be reasonable and right if it could be written into the act rather than depending on the instructions that come along with the act to the officials in the department and it would be much easier for the taxpayer without prejudicing the rights to collect taxes.

Mr. FLEMING (*Eglinton*): I do not think any honourable member thinks or will suggest that in a case where there is a serious question raised in appeal by the appellant taxpayer and the compulsion of payment at the outset of the appeal proceedings would involve his disposing of some asset of the estate, he may not wish to dispose of and he offers adequate security not only for the cost of the appeal proceedings but for the payment of the taxes with whatever interest or penalties may be payable, surely no one thinks the minister is going to be arbitrary and say in a case like that, "we will not take your security, we will take a hard course and make you dispose of that asset." I do not think anyone thinks that is the kind of enforcement that is going to be given to this section.

Mr. PALLETT: That is on the assumption the present party is going to stay in power a long time.

Mr. BENIDICKSON: I would suggest it is similar to the income tax provisions of managerial discretion.

Mr. FLEMING (*Eglinton*): It is identical in this matter.

Mr. BENIDICKSON: This very kind of discretion, as I remember it, was much criticized and feared by members of the Conservative party when they were not in power.

Mr. FLEMING (*Eglinton*): Well, my friend and those he supported advocated this legislation before.

Mr. BENIDICKSON: Oh, I will confess there are several items in this bill that I have in the past urged and was unsuccessful in advancing. You have done very well in some respects. I regret in so many other things you have not changed it when I thought you would.

Mr. CRESTOHL: I think what we should try to do is to safeguard the taxpayers against some decisions later on when this government perhaps is not in power.

Mr. JONES: You wish to save the country from the Liberals.

Mr. CRESTOHL: However, the point I want to make is this: we have been keeping our eye with respect to subclause (2) on the culprit, the man who really is ordered to pay and we are afraid he will do something to either abscond or dispose of his assets or gamble them away. I think that is what we have been talking about. I think we should, sir, look at the man, at the citizen who does not want to evade paying his taxes but wants to honestly and legally avoid paying his taxes because he feels he does not owe the taxes.

Now, I am sure the minister will admit there is a great difference. Mr. Thorson admits there is a very serious difference. I would not like to see John Citizen, who honestly feels he has a good appeal, tarred with the same brush as the culprit. I think we should be very careful in our wording and whilst the minister will exercise a discretion in one way as well as he will in another and no one is suggesting he will abuse that discretion I still think we should give the benefit of the doubt to the citizens who will honestly think they should not pay their tax. I think they should be given the right by appeal to avoid taxation.

Mr. FLEMING (*Eglinton*): Oh, they have the right.

Mr. CRESTOHL: Of course they have the right but they are tarred with the same brush as the culprit whom we suspect will abscond when you use the very word "avoid" and not "evade."

Mr. LINTON: Mr. Chairman, have we not got a difference here between the avoiding or evasion of the liability for taxes and avoidance and evasion on the payment of taxes? This is only for the payment of taxes which has been imposed, the tax has been determined and imposed.

Mr. BENIDICKSON: It is obligatory to collect those taxes?

Mr. LINTON: It is in some cases, yes.

Mr. BENIDICKSON: I would trust the minister as a matter of fact, believe it or not, although he had some doubts in past years. But is it obligatory under subclause (1) to have this tax paid on the property or on anything else you have?

Mr. LINTON: Subclauses (1) and (2) are not too closely related. Subclause (1) contemplates a situation where an appeal has been taken and the machinery here exists to collect the taxes without waiting for the appeal. I submit that is necessary because appeals could be taken simply as delaying tactics on frivolous grounds. Normally security can be accepted, and normally would be accepted. Subclause (2) on the other hand has no relation to appeals necessarily. There may be an appeal pending, or there may not. This primarily relates to a situation where the collection of the tax is in danger, or is in jeopardy either because the people owing it are about to move out of the country or the assets on which it is imposed are about to be moved out of the country.

Mr. BENIDICKSON: You have experienced this quite frequently?

Mr. LINTON: Not "quite frequently", no, but often enough to realize that it must be covered.

Mr. JONES: To put it shortly, Mr. Chairman, to avoid payment of any amount payable a person liable would have to place himself or the assets outside the jurisdiction of Canadian courts. That is the only way he could do this. He could, of course, destroy the assets.

That is the sole situation with which clause 17, subclause (2) is concerned.

Mr. CRESTOHL: That does not quite folow. I see the point you are trying to make, but it is only payable when there is a final judgment.

Mr. JONES: He could not avoid payment on it if he retained the assets in a form where the authorities could seize them if he refused to pay. Therefore, if he keeps the assets in being then the clause will not come into function. If he keeps them in this country that will not happen.

Mr. BENIDICKSON: Is there very much a man could dispose of in value today without the consent of the department? I would assume that if there was litigation pending the release or consent would be withheld.

Mr. LINTON: Yes, the consent machinery is the prime protection. It is possible to hold considerable quantities of property in a form that does not require a consent—cash is the main obvious example, and securities in bearer bonds and securities in nominees' names.

Mr. CRESTOHL: I see a bit of an invasion upon the legal rights of a citizen to legal procedure. This is not a serious invasion, but I see a bit of an invasion there. What Mr. Linton has pointed out is quite correct. We have here the amount determined. In an invasion there is no amount, the man is just trying to avoid taxation, and avoid payment. Here you have an amount determined. I think you sort of dampen and impede somehow—I cannot find the exact shade of meaning—his right to have his day in court.

Mr. LINTON: Oh, no, Mr. Chairman, because he still has the right of appeal.

Mr. CRESTOHL: I realize that, but you say he has to pay his money in advance.

Mr. BENIDICKSON: He may have to sacrifice his capital assets. When you suspect an evasion then I would certainly urge the minister to do his utmost to make him pay a deposit or something.

Mr. FLEMING (*Eglinton*): Mr. Chairman, between these clear limitations, which are evident in clause 17, of the powers that are confered in section 49, I think hon. members can feel that there is every consideration given to the rights of the individual taxpayer.

Clause 17 agreed to.

Mr. BENIDICKSON: Do you think you still have a discretion Mr. Chairman?

On clause 18—Tax as debt of estate.

Mr. BENIDICKSON: Is there any priority here over other creditors as a result of this clause? Are there any new priorities?

Mr. LINTON: No, Mr. Chairman.

Clause 18 agreed to.

On clause 19—Interest.

Mr. BENIDICKSON: Is that the same right as in the old act?

Mr. LINTON: Yes, Mr. Chairman.

Mr. CRESTOHL: Mr. Chairman, has there ever been an explanation given—there must have been, I am sure—as to why when the taxpayer has to pay interest on the arrears of taxes, it is five per cent, or whatever it is, but when the government has to repay him for overpayments on his money he only recovers two per cent, or three per cent?

Mr. FLEMING (*Eglinton*): Yes, Mr. Chairman. The explanation has been given many times. I gave it in the House of Commons just ten days ago.

Clause 19 agreed to.

On clause 20—Delay in filing return.

Mr. BENIDICKSON: Here we have another sort of arbitrary assessment under ministerial authority. This may be new. Subclause (3) says:

"— to be fixed by the Minister" Is subclause (3) comparable to the present Succession Duty Act? You say here "new in part". Is this "to be fixed by the Minister" similar to the old act?

Mr. LINTON: That is not the same provison as the old act, no.

Mr. BENIDICKSON: I have not got my red book here with me. Would you read the old comparable provision into the record. This looks fairly arbitrary. I do not know if this was here all the time.

Mr. FLYNN: I do not understand the difference between (1), (2) and (3).

Mr. LINTON: This is subclause (3) you are referring to. That is a lower penalty than in the old act. It is worded differently but under the old act the penalty was 100 per cent of the duty.

Mr. FLYNN: Does this mean that in all cases of an evasion or attempt to evade, the penalty is fixed by the minister?

Mr. LINTON: Within these limits.

Mr. FLYNN: Yes, but is there any other provision? There are two other cases: failing to file a return and failing to give some information, but this subclause (3) refers only to the evasion or attempt to evade. That is quite strange.

Mr. WINCH: Why should the minister have the power to decide between 25 per cent and 50 per cent? Is that not a matter for the courts to decide?

Mr. NUGENT: This makes the minister judge and jury.

Mr. BENIDICKSON: This is not in effect in all cases because there is an appeal, and I am sure if you made a personal appeal to the minister he would consider it and spend time on it.

Let us face this; nine times out of ten it is a decision that has been arrived at by the officials, under the minister, who have over a period had some quarrel with the other side. The minister is human and he knows his officials and has great confidence in them. They prepare a recommendation for him. We are all human.

Is it not possible that the officials have been in conflict with the potential taxpayer, and with all the tolerance which they might have developed over the years, might they not—

Mr. WINCH: Where is the appeal under subclause (3) of clause 20?

Mr. FLEMING (*Eglinton*): I think there are two points that should be made clear. In the first place any assessment of this penalty under subclause (3) is subject to appeal. That meets the entire point Mr. Winch was making about the rights of the court to determine. This is subject to appeal.

Mr. WINCH: Where does it say that, I cannot find it.

Mr. FLEMING (*Eglinton*): Wait until we come to the appeal section.

Mr. BENIDICKSON: Give us the number right now.

Mr. WINCH: I can find the appeals in substance, and everything else, but I cannot find an appeal on a penalty in regard to a person who has willfully atempted to avoid payment. I do not find that wording under the appeals section.

Mr. FRASER: Clause 23 covers the appeals.

Mr. WINCH: Not in this respect.

Mr. FLEMING (*Eglinton*): The other point I wanted to make was this: this is the language of section 17 of the Dominion Succession Duty Act which has been in effect for the last 17 years.

> Where any person required to file a statement pursuant to section 16 omits to disclose any property included in a succession that should

have been so disclosed, the person filing the statement is liable to pay to the Receiver General of Canada as a penalty an amount equal to 100 per cent of the amount of the duty levied in respect of the succession to such property, but in any proceedings to recover such penalty the executor is not liable thereto if he establishes to the satisfaction of the court that his omission to disclose the property was not intentional.

This is intended to be a relieving provision.

Mr. BENIDICKSON: Who decided the penalty under that act?

Mr. FLEMING (*Eglinton*): It was set here automatically at 100 per cent.

Mr. THORSON: The hon. member asked for the reference on the appeals. It is clause 22, subclause (1) paragraph (b) "of the amount payable by that person as tax, or as interest, or penalties."

Mr. CRESTOHL: I think one of the saving words of the section is the word "willfully".

Mr. BENIDICKSON: Who decides what "willfully" is?

Mr. LINTON: That would be subject to appeal if the minister gave a wrong decision.

Mr. CRESTOHL: Subject to appeal to the Exchequer Court or the tax appeal board?

Mr. FLYNN: In the case of clause 21, the penalty is imposed by a court and a judge.

Mr. LINTON: Subclause (1) of clause 20 assesses the penalty.

Mr. FLYNN: It is not determined by the minister, it is determined by the court?

Mr. LINTON: No, sir.

Mr. FLYNN: Every person who fails to file a return of information as and when required by section 11 is liable to a penalty of $10 for each day of default, but not exceeding $1,000. Where does it say that it is the minister?

Mr. LINTON: The machinery, Mr. Chairman, is that the penalty would be assessed by the department—by the minister—and the taxpayer would have the right of appeal on the penalty, like any other assessment, to the appeal board or the Exchequer Court, or both.

This is subject to appeal before the courts under clause 22.

Mr. BENIDICKSON: Could Mr. Linton please read into the record the present comparable provision to clause 20, subclause (1)?

Mr. PALLETT: Mr. Flynn is talking about clause 20, subclause (1).

Mr. LINTON: 52 (1):

> Every person failing to deliver the statement required by section 16 is liable to a penalty of ten dollars for each day of default which elapses after the time limited for delivering such statement, but such penalty shall not in any case exceed one thousand dollars.

It has different wording but the same effect.

Mr. BENIDICKSON: At the beginning of subclause (2) you start out by saying, "New in part". What are the differences here?

Mr. LINTON: I think you will understand from the explanatory note. The old corresponding clause is a bit long.

Mr. BENIDICKSON: Would you read it into the record?

Mr. LINTON:

> (2) Every person failing to complete the information required on the forms prescribed by the Minister for reporting the particulars required by section 16 is liable to a penalty of $10 where the aggregate net

value of the property the subject matter of the succession does not exceed fifty thousand dollars, and to a penalty of a hundred dollars where the aggregate net value exceeds fifty thousand dollars.

The amount is now on a sliding scale up to $1,000.

Mr. FLYNN: I am not convinced that subclauses 1 and 2 give the right to the minister to levy that penalty.

Mr. LINTON: If you go back to clause 12—

Mr. FLEMING (*Eglinton*): Subclause 5 says: "The minister may at any time assess, tax, interest or penalties under this part ...." He has to have that power in any tax legislation.

Mr. FLYNN: Under the Income Tax Act there are some penalties levied by the minister and some determined by the courts. It seems to me that the court ought to decide.

Mr. CRESTOHL: With respect to section 3, I would like to say a complimentary word to the draftsmen. Here the proper language is used—"anyone who evades or attempts to evade the amount payable".

Mr. FLEMING (*Eglinton*): I was waiting for you to make a comment on that.

Mr. CRESTOHL: You know I will never disappoint you.

Mr. FLYNN: Are you making a compliment to the draftsman or yourself?

Mr. CRESTOHL: The draftsmen.

Clauses 20 to 22 inclusive agreed to.

On clause 23—Appeal.

Mr. NUGENT: Here the taxpayer has 90 days in which to file a notice of objection. It seems to me that the department should be able to consider his notice of objection within the same length of time.

Mr. LINTON: It is comparatively easy for a taxpayer to say he objects to an assessment. He need not give any great detail, but to answer that objection requires the obtaining of large numbers of documents and sometimes actual investigations and discussions. It takes much more time to settle it than to make the objection.

Mr. NUGENT: When an assessment is made by the minister and that person decides he wants to appeal he has only 90 days.

Mr. LINTON: But that 90 days runs from the end of the 180 days.

Mr. NUGENT: The 90 days may run from the day of assessment instead of 180 days after the minister has confirmed assessment.

Mr. LINTON: But you have a period of 90 days in which they can appeal. There is 180 days in which the minister can do something about it. That period is also open to them to gather the facts on their case and they then have another 90 days after that.

Mr. NUGENT: The point is, having been waiting for the minister to assess and finalize the assessment, they have no means of knowing whether or not there is going to be an appeal. That 180 days is not going to be used in searching the documents and preparing for an appeal which may never take place.

Mr. LINTON: If they are seriously in doubt on their assessment they will obviously use all the time they have to gather all they will need. It is much easier for the person appealing to have intimate knowledge of the matters and to gather his information than it is for the department which has to come to it from the outside.

Mr. NUGENT: The point I am making is that the minister might give a notice of reassessment which might be the first intimation which the taxpayer has that he is going to have to pay much more tax than he thought he should,

and after that notice is sent him he has 90 days in which to consider his appeal, whereas the department can wait 180 days if they like before deciding upon reassessment. I do not think that the department should be able to put the taxpayer in the position of having to make the decision in half the time which they may have for that decision.

Mr. LINTON: There is a need for much discussion in most of these appeals, discussion with the taxpayer. The 180 days is not only to enable the department to gather its side of the case but is also to enable them to have discussions on matters at issue. No time will be taken up in discussion during the taxpayer's 90 days.

Clauses 23 and 24 agreed to.

Mr. BENIDICKSON: Mr. Chairman, this seems to be rather a good time to have a break. We have been at it for about two hours. However, I was going to ask, in view of the fact that the brief which I made reference to earlier is new in that it is unlike the other briefs to which we referred, whether or not you would accept it. It is from the Tax Foundation. I can give you my assurance that they would be glad to have it presented. It is based on an analysis of the new bill.

Secondly, I have an analysis, not on Bill 240 but an analysis on Bill C-37, signed by Mrs. Finlayson of the Canadian Committee on the Status of Women. It seems to me that many of the points which we have already covered—

Mr. FLEMING (*Eglinton*): Is this a new submission?

Mr. BENIDICKSON: Yes. It refers not to an analysis of Bill 248.

Mr. FLEMING (*Eglinton*): What is the date of it?

Mr. BENIDICKSON: It was just received this morning, Mr. Chairman, signed by Mrs. Finlayson who is President of the Canadian Committee on the Status of Women. The title is "Estate Tax, Bill C-37". I would think that members of the committee, even if it is not printed, would probably like to have it available in order that they would be able to have a look at it.

I do not know whether or not this is something which might go in as an appendix to the minutes or whether the chairman might decide that it should be duplicated as was done during the 1948 discussions on the income tax bill in respect of any presentation from a reorganized organization that came forward.

Mr. FLEMING (*Eglinton*): May I suggest that this committee will, I am sure, appreciate the assistance of material of this kind. If there is anything in it that has not already been before us I am sure the committee would be glad to have it. Perhaps it could be handed to the committee and if it is not too bulky perhaps it could be engrossed for distribution. If it goes into the appendix we probably would not see it for two weeks.

Mr. BENIDICKSON: I thought that perhaps you would not want me, as a private member, to have it duplicated and distributed.

Mr. FLEMING (*Eglinton*): Is it very bulky?

Mr. BENIDICKSON: The manuscript of the Canadian Tax Foundation is probably a dozen pages and half of it is complementary. The other brief is only two pages. Would the minister like to have a look at it.

Mr. FLEMING (*Eglinton*): I was going to suggest that the committee might go on to six o'clock as we did yesterday. I think that Mr. Benidickson is about to suggest that we should adjourn and should not sit tonight. If he is going to make the suggestion that we do not sit tonight that would have a bearing on whether or not we are going on now.

Mr. BENIDICKSON: I was not going to make that suggestion.

Mr. FLEMING (*Eglinton*): I will have to be in the house this evening, but I am sure I am not necessary here with all the officers here to give the explanations.

Mr. FRASER: You are the only one who said you are not necessary. We think you are.

Clauses 25 and 26 agreed to.

On clause 27—Listed securities.

Mr. BENIDICKSON: I move we adjourn.

Mr. FLEMING (*Eglinton*): Yesterday we sat until six o'clock.

Mr. BENIDICKSON: Two hours is a normal sitting.

The CHAIRMAN: At our earlier organization meeting we said we would sit from 3:30 until 6 o'clock, and I would like to carry on.

Mr. WINCH: Do we have a quorum, Mr. Chairman?

The CHAIRMAN: Yes; if no one runs out.

Mr. BENIDICKSON: I am sorry, but I am rather curious to see what is going on in the private members legislation between 5 and 6 o'clock.

The CHAIRMAN: We are on clause 27.

Mr. BENIDICKSON: Clause 27 is, of course, a very important clause. I wonder if somebody would outline to the committee the representations which were made from some of these important organizations in respect of valuation, as it was in Bill 248, and outlined what changes, if any, have been made.

Mr. LINTON: There were a number of representations to the effect that valuation rules, generally, should not be included. This is one set of recommendations to which no agreement was given.

Mr. BENIDICKSON: What were the representations? The minister assured us that they would be outlined to the committee when requested.

Mr. LINTON: This is the one on clause 53(1) from the Trust Companies Association of Canada:

> Is it the intention of the section that securities on which published quotations are available shall be valued at the closing price or quotation? There is no definition of the term 'closing price or quotation'. We recommend that the term 'closing price or quotation' should be defined specifically so that persons administering estates will know exactly how to value securities. This section makes no allowance for valuation of large holdings of securities which are difficult to market. This can result in substantial hardship. We recommend that this section be amended to provide some relief in this situation.

Mr. BENIDICKSON: The minister might comment and indicate why it was felt undesirable to proceed with some of these recommendations.

Mr. LINTON: On the point of carrying on, we did not believe that it could be defined any more clearly than it is in the section. In respect of the valuation of large holdings, that has been a difficult question in respect of succession duty taxation for years.

Mr. BENIDICKSON: Large holdings; yes.

Mr. LINTON: This is referring to the so-called blockage problem. It was felt, in relation to quoted securities, that the quotation is the best test of value which you can get. If you depart from that, you get into an unreal world.

Mr. BENIDICKSON: I understand that Ontario has some different practice. What is it? Is it that they do not accept as absolute the last stock quotation?

Mr. LINTON: To a degree, but generally I think their practice is the same. There is a departure in this section in that where the deceased controlled the corporation then the quoted price will not govern.

Mr. FRASER: May I ask on what do you determine the value of the stock? Is it the value at the date of death?

Mr. FLEMING (*Eglinton*): Yes.

Mr. FRASER: Is that always the case? I have heard of cases where the security is valued at so much and perhaps a year or two years later they come back and say it is worth much more.

Mr. LINTON: No. The valuation date is always the date of death. It may be that it is a privately held company in which case investigation has to take place to establish what the valuation is, and one of the factors which might come into consideration would be the realization made at a later date, but only in so far as that realization indicated a value existing at the date of death. The date of death throughout determines the value effective.

Mr. JONES: What are the arguments for an alternative valuation date?

Mr. LINTON: Many of the briefs recommend the use of an alternative valuation date. The only jurisdiction I know of which does it is the United States, which allows a one-year alternative date, one year after the date of death. Any alternative date tends to delay both the assessment and the administration of the estate and that is an undesirable feature from the executor's point of view.

Mr. FLEMING (*Eglinton*): In regard to this matter of the alternative date, you can approach it in two ways. Suppose you take a year. The valuation shall be that of the date of death or a year later. Somebody has a choice; presumably it is the taxpayer. You hold up the assessment a full year. So he has his choice; if the property has gone up in value in the year he will choose the date of death. If it has gone down he will choose a year later. Or you could have another situation where you say we will give him a year for the purpose of determining value. That means any time in the year the taxpayer can say, "well this particular stock has reached bottom and therefore we will choose this date." I would suggest the advantage rests with the taxpayer in picking the alternative date. Here we have a well established rule. It has been in effect throughout the whole lifetime of the Dominion Succession Duty Act. You have the same rule precisely in the various provincial succession duty laws and we can see no reason to depart from it. The various representations we received seeking the alternative date are based on the foundation that "you are writing a new law, let us give the taxpayer this additional advantage." I think in principle there are very good reasons for sticking to a rule which has been as well established and has not I think any unsoundness in principle attached to it. If you are going to make reductions in taxes, if you wanted to ease the burden of taxation, I do not think that is the way to do it; if you want to do that, the way to do it is pretty obvious.

Mr. CRESTOHL: Could we ask you what it is?

Mr. FLEMING (*Eglinton*): I will tell you some time, Mr. Crestohl.

The CHAIRMAN: Does clause 27 carry?

Mr. BENIDICKSON: No. I wonder if we could not probably receive in a little fuller form the representations that were made respecting listed securities, 47(1) from say somebody like the Tax Foundation on the matter of blockage. I think they recommended the crown might be affected by manipulated transactions. What was your feeling?

Mr. LINTON: We thought that the crown was best protected by the section as it is. I will read the remarks of the tax foundation.

> It is somewhat surprising that this bill does not recognize 'blockage' and manipulated though quoted securities. The proviso to section 2(1)(a) of the Ontario Succession Duty Act should be adopted. For years administrative officials in the branch have resisted attempts to persuade

them to apply blockage on the basis that it would constitute an embarrassing precedent having regard to past practices. The branch should also take note of the fact that in connection with closely held though listed stocks transactions appearing from time to time are relatively no guide to the real value of the securities, being 'put through' transactions.

Mr. Chairman, with regard to the reasoning which was supposed to have governed the use of this principle in the past, it is not that it would constitute an embarrassing precedent in relation to the past but the belief that it is the best test of value. If you have trading in the market place the best test is the trading that takes place. It is conceivable you may say to break the market, but rarely is this so. The only practicable way to deal with this valuation of listed securities is to use the traded prices.

The CHAIRMAN: Does clause 27 carry?

Mr. BENIDICKSON: Subclause (2), Mr. Chairman, will you call that?

Mr. LINTON: Subclause (2) is one of the departures which perhaps is implied as being proper in this brief. This state that the quoted price will not govern when the holding being valued represents control or represents control with members of the family. In that case the value is often more than the quotation for minority holdings and sometimes it might be less in a stock where a manipulated market existed and there, there might be a good case for it being worth less than the quoted price.

Mr. BENIDICKSON: Well, of course, this refers to blood relationship and I have seen one or two instances where despite blood relationship there have been arm's length transactions and I think this matter of control, either to hold a majority of the shares or any other manner by blood relationship, should provide for some appeal or some rebuttal.

Mr. LINTON: Mr. Chairman, all these matters would be subject to appeal.

Mr. BENIDICKSON: Under what section?

Mr. LINTON: Under the appeal of assessment section, clause 22, I think it is.

Mr. BENIDICKSON: Because the Canadian Tax Foundation did indicate where a father probably disposed of his interest in the business for full value or gave control of his interest in the business to, say, his sons and it ended up that he had lost control at full value and as far as his estate was concerned they could not possibly utilize all the shareholdings remaining in the estate at a pro rata proportion of the breakdown value of the company. They were no longer in control and while there was blood relationship the minority shareholdings were practically frozen. What can you do about that situation under the present bill?

Mr. LINTON: Well, you have to consider the problem in relation to the situation where the holders are not at odds with each other and without some rules it is always contended that everyone is in a minority, at odds with everyone else and generally speaking the shareholders together in a corporation will get together for their own mutual benefit. There could be cases where that is not so, but in the vast majority of cases it is done.

Mr. BENIDICKSON: If in fact it is not so, what right has the estate, the executor to advance facts either to the administration or to a court to convince them that minority shares should be valued under majority shares even though there is a blood relationship between the shareholders?

Mr. LINTON: It would be a question of fact to be established.

Mr. NUGENT: I just wondered if Mr. Benidickson could produce some of this valuable advice from the Canadian Tax Foundation or somebody else as to how to fix up this section rather than merely poking holes in it. It may not

be perfect and maybe this would be the time to bring forward some constructive criticisms.

Mr. BENIDICKSON: I think that is a job for the committee, with combined effort. I think there is a growing dissatisfaction in the community about arbitrary arm's length rules on the part of the administration without any ability to appeal or rebut the presumption. Now, the Canadian Tax Foundation has this to say.

> It should be possible under either act to present a case to show the minister that relationship by blood alone does not necessarily mean that the related persons are not in fact dealing with each other at arm's length. With respect to this subsection it should be appreciated that even in the most closely knit family association the blood tie has little or no bearing upon the relationship of the related parties. A father may be in business with two sons and as a result of strenuous bargaining between the father on the one hand and the sons on the other control of the company may pass from the father to the sons at a price and the price might be just as good as it would be between strangers. Having parted with control the father's ability to cause the company to be wound up so as to obtain for him or for his estate a pro rata share of the profits available for the shareholders upon the winding up control disappears.

In other words, the estate cannot exercise a breakdown value of that and yet as I read it is there a presumption that if there is blood relationship, no matter how proper or accurate the consideration upon having transferred that there is a discretion based on a majority holding.

Mr. LINTON: There are two points about this. Subclause (2) of clause 53 does not do anything beyond this. All subclause (2) of clause 53 does is say the quoted price will not apply when control is held in this way.

I am sorry, I have the old act. Clause 27 (2), which is the one we are discussing now, that does not do anything except take out of the quotation-governance clause a company which the deceased or his family controls. No. 28 (1), however, does something of the nature of what is suggested.

Mr. FLEMING (*Eglinton*): I think if I may say so, Mr. Benidickson is jumping the gun here a bit. Certainly by 27 (2) all it does is to say that the rule in 27 (1) does not apply in the case where the securities are dealing with a corporation controlled by the deceased or members of his family or where there is no recorded trading in the securities concerned. It just says 27 (1) does not apply in that case. Surely it is a later clause which Mr. Benidickson wants to rest his point on.

Mr. BENIDICKSON: Of course I am under the same difficulty, I am referring to notes which have a nomenclature that refers to the old bill.

Mr. LINTON: Perhaps we can relate those. I was also in the same difficulty. Section 27 (2) represents 53 (2) of the old one, and 28 (1) is 54 (1) of the old one.

Mr. BENIDICKSON: I just raise the point on both sections, is it an irrebuttable thing?

Mr. FLEMING (*Eglinton*): No, that is not the effect of 27 (2). All that 27 (2) says with respect to the security of a class I have mentioned is that their value is not determined in the manner determined by 27 (1). That is all it says.

The CHAIRMAN: Clause 27, subclause (2) carried?

Agreed to.

Subclause 3 agreed to.

Mr. BENIDICKSON: Well, I will not repeat my previous remarks which I recognize are relevant now under the new bill to clause 28 (1). On that the Canadian Certified Accountants' Association have complained on that section in the old bill.

The CHAIRMAN: Are you talking of clause 28 now?

Mr. BENIDICKSON: Yes. I quote from the brief of the Canadian Institute of Certified Public Accountants. They complain:

> There is no discretion whereby the minister can recognize and make allowance for a special situation. It seems most unreasonable that property owned by a deceased person should be valued, taking into account property owned by other people. It is only the property owned by the deceased that is being taxed. Therefore we feel that such property should be valued on its own.

Mr. LINTON: Well, Mr. Chairman, I would agree with that, but the section does not do that. What the section does is to value only the deceased's holdings, to not make any allowance of a discount because he is a minority holder if he is only a minority in the family. It does not value in his case the holdings of anybody else. Then perhaps this submission is based on a misconception of what the section does.

The CHAIRMAN: Which brief are you reading, Mr. Benidickson?

Mr. BENIDICKSON: The chartered accountants' brief.

Mr. FLEMING (*Eglinton*): That point was considered and the view that Mr. Linton has expressed is the view that was taken of it, I might say, Mr. Chairman.

Mr. LINTON: We do not think clause 28 does what the accountants thought it did in the old bill.

Mr. BENIDICKSON: I do recall from personal experience an instance where there were relations in a company and I saw a situation where second or third cousins had a minority interest and there was an attempt to consider that it was a controlled family organization. Under the definition here, of course, that would not be blood relationship so that it does not affect that, but it gave me a very clear illustration of how after death, even though a deceased had been a participant in a corporation, if the majority holders of stock had hold of that stock and had control of it they could very well say, "We have not the slightest interest in declaring dividends in so far as the holding of the estate is concerned."

Mr. LINTON: In a closer relationship let us imagine that victimization is to take place. The estate, though it may lose the immediacy of dividends, its interest in the corporation is positively more than any receipt of dividends. He would still have an interest in the break-up value.

Mr. BENIDICKSON: The estate would have an interest in the break-up value, but on the other hand it is the dollar value at the date of death. Who in the dickens would want to pay that if they saw that the majority of other shareholders were not interested, and they probably even had control of the transfer of stock? If they did not want to pay dividends, who in the world would be bothered with a minority interest if it seemed to be the will of the majority shareholders, for their own purposes, not to declare them?

Mr. LINTON: Not infrequently the majority shareholders will buy in the minority.

Mr. BENIDICKSON: Yes, but I have heard it expressed in this regard that they wanted that stock just as much as they wanted a second hole in the head.

Mr. CRESTOHL: What valuation would you possibly place on the minority? How would you assess its value?

Mr. FLEMING (*Eglinton*): This is a question of fact in each case. There is a right of appeal on the part of the taxpayer if he is not satisfied with the policy.

Mr. NUGENT: Mr. Chairman, I am afraid you lost me someplace in this because the explanatory note says the minority shareholder will be treated as one of the controlling group shareholders.

The wording of line 19 says that the stock shall be, for the purpose of this act, determined as though it belonged to the controlling group.

Mr. BENIDICKSON: That is just the point of the protest.

Mr. LINTON: The protest, Mr. Chairman, was that the main stock of the whole group would be valued on the deceased's death. It is only the stock of the deceased that will be valued, but as part of the group represented by the family holdings.

Mr. NUGENT: I do not think it means that.

Mr. LINTON: Oh yes, there is a great difference. A deceased might own 20 shares out of 100 shares, and the rest his family owned. The difference is whether you are valuing, 100 or 20, but you are only valuing 20. Some of these briefs assume that you are valuing 100, not valuing the 20 as part of the 100.

Mr. NUGENT: It seems to me that they would object to the principle that they should be valued as part of the group merely because the other shareholders were related.

Mr. LINTON: I do not think that is the meaning of the brief.

Mr. NUGENT: My own objection to it at the moment is that they must be valued with the whole group, under this clause, whereas they might be at arm's length despite the relationship. That interpretation might give a different value to the shares, depending on all the other circumstances.

I would have thought the department would have been on safer ground to have used the word "may" in there instead of the word "shall".

Mr. LINTON: In that case you would leave a great discretion with the minister.

Mr. BENIDICKSON: I think that is the proper thing to do in this case. I would leave the illustration with you of a father divesting himself of the major control, but still controlling some minor shares. After his death, in view of the fact that the sons had paid full consideration for the shares that they had acquired from him, they were not interested in what was done with respect to the estate holdings of the minority stock.

Mr. CRESTOHL: Would you hesitate to give the minister a discretion in this matter?

Mr. LINTON: That is really a matter of policy.

Mr. NUGENT: It seems to me that blood relationship should be only one of the factors to be considered in whether or not this particular minority block of shares is acted upon in conjunction with the others thereby becoming more valuable.

Mr. LINTON: This, of course, Mr. Chairman, is a very difficult thing to prove. It is always alleged, or almost always alleged.

Mr. NUGENT: This section, the way it reads now, shows the blood relation as being a fact, you cannot argue it. Once you prove blood relationship that block of shares automatically becomes part of the controlling block and has to be valued as such.

I would think that there are factors to be taken into consideration.

Mr. BENIDICKSON: They might even have been enemies, or very bad friends.

Mr. CRESTOHL: That block of shares might be worthless.

Mr. BENIDICKSON: It might be sterilized by that fact.

Mr. CRESTOHL: The widow who is left with the block of stock has absolutely nothing and yet she may be called upon to pay succession duty because it is valued in relatioin to the—

Mr. BENIDICKSON: That breakdown only, or some other—

Mr. CRESTOHL: Which may not take place for years, yet she has no money to pay the taxes.

Mr. LINTON: This case might happen, but you say that she is worth nothing; if she is a shareholder of the company she has an interest in the company.

Mr. BENIDICKSON: I can conceive of a case where it would be worth absolutely nothing, or very little, shall I say. There might be bad feeling in the company among the blood relations. The stock has a certain breakdown value, but no dividends are going to be declared; there is no longer anybody participating on a salary basis in the company so there is no reward there.

A stranger first of all would be timid to get into the thing, and secondly there might be something in the incorporating section saying that a transfer could not be made without the consent of the shareholders.

Mr. CRESTOHL: I can cite you an actual case. We once took proceedings to try to wind up a company in order to get the minority shareholder some value for his holdings and we could not get them to wind it up. He is still sitting with his shares and getting no dividends. He may sit holding them for years.

The CHAIRMAN: How can you administer what you are trying to do?

Mr. BENIDICKSON: By some provision in the act that gives the court, or the minister, or somebody else, some discretion to look at the facts and decide that they are unfair and at arm's length, but not to presume that they are not.

Mr. FLEMING (*Eglinton*): I think you are creating a very serious administrative problem if you are going to take out of the act a provision of this kind. You are going to leave this open to all kinds of abuse. The only alternative that is offered is that you give a discretion to the minister.

In this particular case, I should think that would have to be, if you are going in that direction, a very wide open discretion, the kind of discretion that has been—

Mr. BENIDICKSON: Let us try the courts.

Mr. FLEMING (*Eglinton*): It would have to be the kind of discretion that this parliament in by-gone years found objectionable in taxing legislation.

You will recall that one of the reasons that the income tax legislation was brought into being a decade ago was the fact that strong objection was being taken, in parliament, to so many discretions existing under the old Income War Tax Act.

If that is the only alternative that is offered to the language of this clause then I am afraid it is open to some strong doubts.

Mr. BENIDICKSON: I could advocate another one: it would be left to the court to decide on a matter of fact as to whether or not such a situation exists.

Mr. FLEMING (*Eglinton*): You could not force everyone to go to court to get a determination of value. That would be placing a very heavy burden on any taxpayer, let alone the department.

You have a provision for appeal where there is an appeal against assessment, and where an assessment does not represent a proper evaluation.

You see, the element of discretion destroys any possibility of appeal because, if the discretion is vested on the minister, no court is going to interfere with the minister exercising his discretion.

Mr. BENIDICKSON: Could we not say that the fact could be determined by the court as it always was determined by the court? We have jurisprudence in this regard. The court could decide as to the fact, prior to the statute saying that it is presumed that people of certain relationship are not at arm's length.

Mr. FLEMING (*Eglinton*): Does that mean you are going to send the department or the taxpayer to court to determine the value of the stock before assessment? You would never get assessment made in some of these cases, and you would be imposing an intolerable burden on the taxpayer, not to mention the department.

Mr. CRESTOHL: Value frequently is what reliable value is. Assume that a widow is left as a minority shareholder and has not got very much more. The department comes along and says we value it at so much and in the light of the other shares we assess you so much. All she has are the share certificates and she has no money. Would it not be fair for her to say, here, take my share certificates and if and when you can realize on them, then realize on them; you cannot take from me more than I have; I am giving you my shares, hold them for six years.

Mr. FLEMING (*Eglinton*): I beg of Mr. Crestohl not to put the government in the securities business.

Mr. CRESTOHL: No. The government is quite secure as it is.

The CHAIRMAN: Is clause 28 agreed to?

Mr. CRESTOHL: No. Let us discuss it a little more.

Mr. BELL (*Carleton*): I move that we adjourn until 3:30 tomorrow.

—The committee adjourned.